

AMENDED IN SENATE AUGUST 20, 2001

AMENDED IN SENATE JUNE 20, 2001

AMENDED IN ASSEMBLY MAY 15, 2001

AMENDED IN ASSEMBLY MAY 3, 2001

AMENDED IN ASSEMBLY APRIL 17, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 655

Introduced by Assembly Member Wright

February 22, 2001

An act to amend Sections 1785.10, 1785.16, 1786, 1786.2, 1786.10, 1786.11, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.28, 1786.50, and 1786.52 of, to add Sections ~~1785.11.5~~ 1785.11.8, 1785.16.1, 1785.16.2, 1785.20.3, 1786.29, ~~1786.53, and 1788.4~~ and 1786.53 to, to add Title ~~1.81A~~ 1.81.3 (commencing with Section ~~1798.90~~ 1798.92) to Part 4 of Division 3 of, and to repeal Article 3 (commencing with Section 1786.40) of Title 1.6A of Part 4 of Division 3 of, the Civil Code, relating to personal identifying information.

LEGISLATIVE COUNSEL'S DIGEST

AB 655, as amended, Wright. Personal identifying information: identity theft.

Existing law requires consumer credit report agencies to allow a consumer to elect to have his or her name removed from any list provided by the consumer credit reporting agencies for firm offers of credit that are not initiated by the consumer, as specified.

This bill would permit a consumer to specify, either verbally or in writing, that his or her name shall be removed from lists that a consumer credit reporting agency furnishes for credit card solicitations for a minimum of two years, and that consumer credit reporting agencies would be required to inform a consumer of this option, as specified.

Existing law provides a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a police report indicating that another person has unlawfully used the consumer's personal identifying information.

This bill additionally would require a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a Department of Motor Vehicles investigative report indicating that another person has unlawfully used the consumer's personal identifying information. The bill would set forth requirements regarding the unblocking of certain information by a consumer reporting agency after an allegation of identity theft by a consumer, and would permit a consumer reporting agency to disregard a consumer's version of disputed information, as specified. This bill would also require that a consumer credit reporting agency delete from a consumer credit report inquiries for credit reports that were initiated as the result of identity theft.

Existing law places certain requirements on users of consumer credit reports, including the right of the consumer to prohibit the use of information in a consumer's files in connection with credit transactions not initiated by the consumer.

This bill would require any person who uses a consumer credit report in connection with a credit transaction and who discovers that the address on the consumer credit report does not match the address of the consumer requesting or being offered credit to take reasonable steps to verify the accuracy of the consumer's address, as specified, and confirm that the credit transaction is not the result of defined identity theft. This bill would create similar requirements for any person who uses a consumer credit report in connection with a credit transaction and who receives specified notification from a consumer credit reporting agency that information in the report has been blocked as the result of an identity theft. This bill would provide that a consumer damaged by a failure to fulfill the above described requirements would have a claim against the person using the report, as specified.



Existing law restricts the dissemination of certain types of personal identifying information by specific professions and businesses. Existing law also provides, generally, that a consumer is not liable on debt incurred by a 3rd party, and limits a consumer's liability on the unauthorized use of a credit card, as defined.

This bill would allow a person to bring a cause of action against a claimant to establish that the person is a victim of identity theft, as defined; or if the claimant has brought a cause of action to recover on its claim, the bill would allow the person to file a cross complaint to establish that the person is a victim of identity theft in connection with the claim. This bill would allow the victim to obtain a judgment that, among other things, declares the victim is not obligated on these claims, that declares void any security interests in the victim's property, that provides for an injunction restraining attempts to collect on these claims, that may include actual damages and equitable relief as the court deems appropriate, that may include a civil penalty up to \$30,000 and that awards reasonable attorney's fees and costs. This bill would allow the victim to join any person purporting to have a claim that the victim maintains arises from identity theft in the action regardless of whether those claims arise out of the same transaction or occurrence. The bill would also provide for continuing jurisdiction in these actions and the limitation on bringing actions or joining defendants with respect to the action.

Existing law regulates the activities of investigative consumer reporting agencies, as specified.

This bill would revise and recast various provisions governing the activities of investigative consumer reporting agencies. Among other things, it would expand the definition of "investigative consumer reporting agency," increase disclosure requirements, eliminate certain exemptions, increase penalties for violations, and would make related changes.

The bill would prohibit creditors from selling a consumer debt to a debt collector, except as specified, if the consumer's file with a consumer credit reporting agency is blocked or the creditor has reason to believe the consumer is a victim of identity theft. The bill would also prohibit persons who gather specified information on a consumer in lieu of using the services of an investigative consumer reporting agency to provide that information to the consumer.

This bill would incorporate additional changes in Section 1785.10 of the Civil Code proposed by AB 488 to become operative only if this



bill and AB 488 are both enacted on or before January 1, 2002, each bill amends Section 1785.10 of the Civil Code, and this bill is enacted last.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.10 of the Civil Code is amended
2 to read:
3 1785.10. (a) Every consumer credit reporting agency shall,
4 upon request and proper identification of any consumer, allow the
5 consumer to visually inspect all files maintained regarding that
6 consumer at the time of the request.
7 (b) Every consumer reporting agency, upon contact by a
8 consumer by telephone, mail, or in person regarding information
9 which may be contained in the agency files regarding that
10 consumer, shall promptly advise the consumer of his or her rights
11 under Sections ~~1785.11.5~~ 1785.11.8, 1785.19, and 1785.19.5, and
12 of the obligation of the agency to provide disclosure of the files in
13 person, by mail, or by telephone pursuant to Section 1785.15,
14 including the obligation of the agency to provide a decoded written
15 version of the file or a written copy of the file with an explanation
16 of any code, including any credit score used, and the key factors,
17 as defined in Section 1785.15.1, if the consumer so requests that
18 copy. The disclosure shall be provided in the manner selected by
19 the consumer, chosen from among any reasonable means available
20 to the consumer credit reporting agency.
21 The agency shall determine the applicability of subdivision (1)
22 of Section 1785.17 and, where applicable, the agency shall inform
23 the consumer of the rights under that section.
24 (c) All information on a consumer in the files of a consumer
25 credit reporting agency at the time of a request for inspection under
26 subdivision (a), shall be available for inspection, including the
27 names and addresses of the sources of information.
28 (d) (1) The consumer credit reporting agency shall also
29 disclose the recipients of any consumer credit report on the
30 consumer which the consumer credit reporting agency has
31 furnished:

1 (A) For employment purposes within the two-year period
2 preceding the request.

3 (B) For any other purpose within the 12-month period
4 preceding the request.

5 (2) Disclosure of recipients of consumer credit reports for
6 purposes of this subdivision shall include the name of the recipient
7 or, if applicable, the fictitious business name under which the
8 recipient does business disclosed in full. If requested by the
9 consumer, the identification shall also include the address of the
10 recipient.

11 (e) The consumer credit reporting agency shall also disclose a
12 record of all inquiries received by the agency in the 12-month
13 period preceding the request that identified the consumer in
14 connection with a credit transaction which is not initiated by the
15 consumer. This record of inquiries shall include the name of each
16 recipient making an inquiry.

17 *SEC. 1.5. Section 1785.10 of the Civil Code is amended to*
18 *read:*

19 1785.10. (a) Every consumer credit reporting agency shall,
20 upon request and proper identification of any consumer, allow the
21 consumer to visually inspect all files maintained regarding that
22 consumer at the time of the request.

23 (b) Every consumer reporting agency, upon contact by a
24 consumer by telephone, mail, or in person regarding information
25 which may be contained in the agency files regarding that
26 consumer, shall promptly advise the consumer of his or her rights
27 under Sections 1785.11.8, 1785.19, and 1785.19.5, and of the
28 obligation of the agency to provide disclosure of the files in
29 person, by mail, or by telephone pursuant to Section 1785.15,
30 including the obligation of the agency to provide a decoded written
31 version of the file or a written copy of the file with an explanation
32 of any code, including any credit score used, and the key factors,
33 as defined in Section 1785.15.1, if the consumer so requests that
34 copy. The disclosure shall be provided in the manner selected by
35 the consumer, chosen from among any reasonable means available
36 to the consumer credit reporting agency.

37 The agency shall determine the applicability of subdivision (1)
38 of Section 1785.17 and, where applicable, the agency shall inform
39 the consumer of the rights under that section.

(c) All information on a consumer in the files of a consumer credit reporting agency at the time of a request for inspection under subdivision (a), shall be available for inspection, including the names ~~and addresses of~~, *addresses and, if provided by the sources of information, the telephone numbers identified for customer service for the sources of information.*

(d) (1) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

(2) Disclosure of recipients of consumer credit reports for purposes of this subdivision shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. ~~If requested by the consumer, the~~ *The identification shall also include the address of and, if provided by the recipient, the telephone number identified for customer service for the recipient.*

(e) The consumer credit reporting agency shall also disclose a record of all inquiries received by the agency in the 12-month period preceding the request that identified the consumer in connection with a credit transaction which is not initiated by the consumer. This record of inquiries shall include the name ~~of~~, *address and, if provided by the recipient, the telephone number identified for customer service for each recipient making an inquiry.*

(f) *Any consumer credit reporting agency when it is subject to the provisions of Section 1785.22 is exempted from the requirements of subdivisions (c), (d), and (e), only with regard to the provision of the address and telephone number.*

(g) *Any consumer credit reporting agency, that provides a consumer credit report to another consumer credit reporting agency that procures the consumer credit report for the purpose of resale and is subject to Section 1785.22, is exempted from the requirements of subdivisions (d) and (e), only with regard to the provision of the address and telephone number regarding each prospective user to which the consumer credit report was sold.*

SEC. 2. Section ~~1785.11.5~~ 1785.11.8 is added to the Civil Code, to read:

~~1785.11.5.~~

1785.11.8. A consumer may elect that his or her name shall be removed from any list that a consumer credit reporting agency furnishes for credit card solicitations, by notifying the consumer credit reporting agency, by telephone or in writing, pursuant to the notification system maintained by the consumer credit reporting agency pursuant to subdivision (d) of Section 1785.11. The election shall be effective for a minimum of two years, unless otherwise specified by the consumer.

SEC. 3. Section 1785.16 of the Civil Code is amended to read:

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge, reinvestigate and record the current status of the disputed information before the end of the 30-business-day period beginning on the date the agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information, as requested by the consumer credit reporting agency, to investigate the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person. A consumer credit reporting agency may require that disputes by consumers be in writing.

(b) In conducting that reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer by mail or, if authorized by the consumer

1 for that purpose, by any other means available to the consumer
2 credit reporting agency, within five business days after that
3 determination is made that it is terminating its reinvestigation of
4 the item of information. In this notification, the consumer credit
5 reporting agency shall state the specific reasons why it has
6 determined that the consumer's dispute is frivolous or irrelevant.
7 If the disputed item of information is found to be inaccurate,
8 missing, or can no longer be verified by the evidence submitted,
9 the consumer credit reporting agency shall promptly add, correct,
10 or delete that information from the consumer's file.

11 (c) No information may be reinserted in a consumer's file after
12 having been deleted pursuant to this section unless the person who
13 furnished the information certifies that the information is accurate.
14 If any information deleted from a consumer's file is reinserted in
15 the file, the consumer credit reporting agency shall promptly
16 notify the consumer of the reinsertion in writing or, if authorized
17 by the consumer for that purpose, by any other means available to
18 the consumer credit reporting agency. As part of, or in addition to,
19 this notice the consumer credit reporting agency shall, within five
20 business days of reinserting the information, provide the consumer
21 in writing (1) a statement that the disputed information has been
22 reinserted, (2) a notice that the agency will provide to the
23 consumer, within 15 days following a request, the name, address,
24 and telephone number of any furnisher of information contacted
25 or which contacted the consumer credit reporting agency in
26 connection with the reinsertion, (3) the toll-free telephone number
27 of the consumer credit reporting agency that the consumer can use
28 to obtain this name, address, and telephone number, and (4) a
29 notice that the consumer has the right to a reinvestigation of the
30 information reinserted by the consumer credit reporting agency
31 and to add a statement to his or her file disputing the accuracy or
32 completeness of the information.

33 (d) A consumer credit reporting agency shall provide written
34 notice to the consumer of the results of any reinvestigation under
35 this subdivision, within five days of completion of the
36 reinvestigation. The notice shall include (1) a statement that the
37 reinvestigation is completed, (2) a consumer credit report that is
38 based on the consumer's file as that file is revised as a result of the
39 reinvestigation, (3) a description or indication of any changes
40 made in the consumer credit report as a result of those revisions to



1 the consumer's file and a description of any changes made or
 2 sought by the consumer that were not made and an explanation
 3 why they were not made, (4) a notice that, if requested by the
 4 consumer, a description of the procedure used to determine the
 5 accuracy and completeness of the information shall be provided to
 6 the consumer by the consumer credit reporting agency, including
 7 the name, business address, and telephone number of any furnisher
 8 of information contacted in connection with that information, (5)
 9 a notice that the consumer has the right to add a statement to the
 10 consumer's file disputing the accuracy or completeness of the
 11 information, (6) a notice that the consumer has the right to request
 12 that the consumer credit reporting agency furnish notifications
 13 under subdivision (h), (7) a notice that the dispute will remain on
 14 file with the agency as long as the credit information is used, and
 15 (8) a statement about the details of the dispute will be furnished to
 16 any recipient as long as the credit information is retained in the
 17 agency's data base. A consumer credit reporting agency shall
 18 provide the notice pursuant to this subdivision respecting the
 19 procedure used to determine the accuracy and completeness of
 20 information, not later than 15 days after receiving a request from
 21 the consumer.

22 (e) The presence of information in the consumer's file that
 23 contradicts the contention of the consumer shall not, in and of
 24 itself, constitute reasonable grounds for believing the dispute is
 25 frivolous or irrelevant.

26 (f) If the consumer credit reporting agency determines that the
 27 dispute is frivolous or irrelevant, or if the reinvestigation does not
 28 resolve the dispute, or if the information is reinserted into the
 29 consumer's file pursuant to subdivision (c), the consumer may file
 30 a brief statement setting forth the nature of the dispute. The
 31 consumer credit reporting agency may limit these statements to not
 32 more than 100 words if it provides the consumer with assistance
 33 in writing a clear summary of the dispute.

34 (g) Whenever a statement of dispute is filed, the consumer
 35 credit reporting agency shall, in any subsequent consumer credit
 36 report containing the information in question, clearly note that the
 37 information is disputed by the consumer and shall include in the
 38 report either the consumer's statement or a clear and accurate
 39 summary thereof.



1 (h) Following the deletion of information from a consumer's
2 file pursuant to this section, or following the filing of a statement
3 of dispute pursuant to subdivision (f), the consumer credit
4 reporting agency, at the request of the consumer, shall furnish
5 notification that the item of information has been deleted or that
6 the item of information is disputed. In the case of disputed
7 information, the notification shall include the statement or
8 summary of the dispute filed pursuant to subdivision (f). This
9 notification shall be furnished to any person designated by the
10 consumer who has, within two years prior to the deletion or the
11 filing of the dispute, received a consumer credit report concerning
12 the consumer for employment purposes, or who has, within 12
13 months of the deletion or the filing of the dispute, received a
14 consumer credit report concerning the consumer for any other
15 purpose, if these consumer credit reports contained the deleted or
16 disputed information. The consumer credit reporting agency shall
17 clearly and conspicuously disclose to the consumer his or her
18 rights to make a request for this notification. The disclosure shall
19 be made at or prior to the time the information is deleted pursuant
20 to this section or the consumer's statement regarding the disputed
21 information is received pursuant to subdivision (f).

22 (i) A consumer credit reporting agency shall maintain
23 reasonable procedures to prevent the reappearance in a consumer's
24 file and in consumer credit reports of information that has been
25 deleted pursuant to this section and not reinserted pursuant to
26 subdivision (c).

27 (j) If the consumer's dispute is resolved by deletion of the
28 disputed information within three business days, beginning with
29 the day the consumer credit reporting agency receives notice of the
30 dispute in accordance with subdivision (a), and provided that
31 verification thereof is provided to the consumer in writing within
32 five business days following the deletion, then the consumer credit
33 reporting agency shall be exempt from requirements for further
34 action under subdivisions (d), (f), and (g).

35 (k) If a consumer submits to a credit reporting agency a copy
36 of a valid police report, or a valid investigative report made by a
37 Department of Motor Vehicles investigator with peace officer
38 status, filed pursuant to Section 530.5 of the Penal Code, the
39 consumer credit reporting agency shall promptly and permanently
40 block reporting any information that the consumer alleges appears



1 on his or her credit report as a result of a violation of Section 530.5
2 of the Penal Code so that the information cannot be reported. The
3 consumer credit reporting agency shall promptly notify the
4 furnisher of the information that the information has been so
5 blocked. Furnishers of information and consumer credit reporting
6 agencies shall ensure that information is unblocked only upon a
7 preponderance of the evidence establishing the facts required
8 under paragraph (1), (2), or (3). The permanently blocked
9 information shall be unblocked only if: (1) the information was
10 blocked due to a material misrepresentation of fact by the
11 consumer or fraud, or (2) the consumer agrees that the blocked
12 information, or portions of the blocked information, were blocked
13 in error, or (3) the consumer knowingly obtained possession of
14 goods, services, or moneys as a result of the blocked transaction
15 or transactions or the consumer should have known that he or she
16 obtained possession of goods, services, or moneys as a result of the
17 blocked transaction or transactions. If blocked information is
18 unblocked pursuant to this subdivision, the consumer shall be
19 promptly notified in the same manner as consumers are notified of
20 the reinsertion of information pursuant to subdivision (c). The
21 prior presence of the blocked information in the consumer credit
22 reporting agency's file on the consumer is not evidence of whether
23 the consumer knew or should have known that he or she obtained
24 possession of any goods, services, or moneys. For the purposes of
25 this subdivision, fraud may be demonstrated by circumstantial
26 evidence. In unblocking information pursuant to this subdivision,
27 furnishers and consumer credit reporting agencies shall be subject
28 to their respective requirements pursuant to this title regarding the
29 completeness and accuracy of information.

30 (l) In unblocking information as described in subdivision (k),
31 a consumer reporting agency shall comply with all requirements
32 of this section and 15 U.S.C. Sec. 1681i relating to reinvestigating
33 disputed information. In addition, a consumer reporting agency
34 shall accept the consumer's version of the disputed information
35 and correct or delete the disputed item when the consumer submits
36 to the consumer reporting agency documentation obtained from
37 the source of the item in dispute or from public records confirming
38 that the report was inaccurate or incomplete, unless the consumer
39 reporting agency, in the exercise of good faith and reasonable
40 judgment, has substantial reason based on specific, verifiable facts



1 to doubt the authenticity of the documentation submitted and
2 notifies the consumer in writing of that decision, explaining its
3 reasons for unblocking the information.

4 (m) Any provision in a contract that prohibits the disclosure of
5 a credit score by a person who makes or arranges loans or a
6 consumer credit reporting agency is void. A lender shall not have
7 liability under any contractual provision for disclosure of a credit
8 score.

9 SEC. 4. Section 1785.16.1 is added to the Civil Code, to read:

10 1785.16.1. A consumer credit reporting agency shall delete
11 from a consumer credit report inquiries for credit reports based
12 upon credit requests that the consumer credit reporting agency
13 verifies were initiated as the result of identity theft, as defined in
14 Section 1798.80.

15 SEC. 4.5. *Section 1785.16.2 is added to the Civil Code, to*
16 *read:*

17 1785.16.2. (a) *No creditor may sell a consumer debt if the*
18 *consumer's file with a consumer credit reporting agency is blocked*
19 *with respect to that debt pursuant to subdivision (k) of Section*
20 *1785.16, or if the consumer has provided the creditor with*
21 *sufficient information in writing that the consumer is not obligated*
22 *to pay the debt because he or she is a victim of identity theft, as*
23 *defined in subdivision (d) of Section 1798.92, for the creditor to*
24 *have reasonable grounds to determine that consumer's statement*
25 *of identity theft is not frivolous.*

26 (b) *Subdivision (a) does not apply to a creditor's sale of a debt*
27 *to a subsidiary or affiliate of the creditor.*

28 SEC. 5. Section 1785.20.3 is added to the Civil Code, to read:

29 1785.20.3. (a) Any person who uses a consumer credit report
30 in connection with a credit transaction, and who discovers that the
31 address on the consumer credit report does not match the address
32 of the consumer requesting or being offered credit, shall take
33 reasonable steps to verify the accuracy of the consumer's address,
34 and shall either ~~call the~~ *communicate to* consumer by telephone,
35 or write the consumer, to confirm that the credit transaction is not
36 the result of identity theft, as defined in Section 1798.90.

37 (b) Any person who uses a consumer credit report in
38 connection with a credit transaction, and who receives a clearly
39 identifiable notification, consisting of more than a tradeline, from
40 a consumer credit reporting agency that information in the report

1 has been blocked pursuant to Section 1785.16 as the result of an
2 identity theft, shall not lend money or extend credit without taking
3 reasonable steps to verify the consumer's identity and to confirm
4 that the credit transaction is not the result of identity theft.

5 (c) Any consumer who suffers damages as a result of a violation
6 of this section by any person may bring an action in a court of
7 appropriate jurisdiction against that person to recover actual
8 damages, court costs, attorney's fees, and punitive damages of not
9 more than thirty thousand dollars (\$30,000) for each violation, as
10 the court deems proper.

11 (d) *As used in this section, "credit transaction" does not*
12 *include the establishment of a service provided by a company*
13 *doing business pursuant to Section 216 of the Public Utilities Code*
14 *or Section 53066 of the Government Code.*

15 (e) As used in this section, "identity theft" has the meaning
16 given in Section 1798.90.

17 SEC. 6. Section 1786 of the Civil Code is amended to read:

18 1786. The Legislature finds and declares as follows:

19 (a) Investigative consumer reporting agencies have assumed a
20 vital role in collecting, assembling, evaluating, compiling,
21 reporting, transmitting, transferring, or communicating
22 information on consumers for employment and insurance
23 purposes, and for purposes relating to the hiring of dwelling units,
24 subpoenas and court orders, licensure, and other lawful purposes.

25 (b) There is a need to insure that investigative consumer
26 reporting agencies exercise their grave responsibilities with
27 fairness, impartiality, and a respect for the consumer's right to
28 privacy.

29 (c) The crime of identity theft in this new computer era has
30 exploded to become the fastest growing white collar crime in
31 America.

32 (d) The unique nature of this crime means it can often go
33 undetected for years without the victim being aware his identity
34 has been misused.

35 (e) Because notice of identity theft is critical before the victim
36 can take steps to stop and prosecute this crime, consumers are best
37 protected if they are automatically given copies of any
38 investigative consumer reports made on them.

39 (f) It is the purpose of this title to require that investigative
40 consumer reporting agencies adopt reasonable procedures for

1 meeting the needs of commerce for employment, insurance
2 information, and information relating to the hiring of dwelling
3 units in a manner which is fair and equitable to the consumer, with
4 regard to the confidentiality, accuracy, relevancy, and proper
5 utilization of the information in accordance with the requirements
6 of this title.

7 (g) The Legislature hereby intends to regulate investigative
8 consumer reporting agencies pursuant to this title in a manner
9 which will best protect the interests of the people of the State of
10 California.

11 SEC. 7. Section 1786.2 of the Civil Code is amended to read:

12 1786.2. The following terms as used in this title have the
13 meaning expressed in this section:

14 (a) The term “person” means any individual, partnership,
15 corporation, limited liability company, trust, estate, cooperative,
16 association, government or governmental subdivision or agency,
17 or other entity. The term “person” as used in this title shall not be
18 construed to require duplicative reporting by any individual,
19 corporation, trust, estate, cooperative, association, government, or
20 governmental subdivision or agency, or other entity involved in
21 the same transaction.

22 (b) The term “consumer” means a natural individual who has
23 made application to a person for employment purposes, for
24 insurance for personal, family, or household purposes, or the
25 hiring of a dwelling unit, as defined in subdivision (c) of Section
26 1940.

27 (c) The term “investigative consumer report” means a
28 consumer report in which information on a consumer’s character,
29 general reputation, personal characteristics, or mode of living is
30 obtained through any means. The term does not include a
31 consumer report or other compilation of information that is limited
32 to specific factual information relating to a consumer’s credit
33 record or manner of obtaining credit obtained directly from a
34 creditor of the consumer or from a consumer reporting agency
35 when that information was obtained directly from a potential or
36 existing creditor of the consumer or from the consumer.
37 Notwithstanding the foregoing, for transactions between
38 investigative consumer reporting agencies and insurance
39 institutions, agents, or insurance-support organizations subject to
40 Article 6.6 (commencing with Section 791) of Chapter 1 of Part

2 of Division 1 of the Insurance Code, the term “investigative consumer report” shall have the meaning set forth in subdivision (n) of Section 791.02 of the Insurance Code.

(d) The term “investigative consumer reporting agency” means any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.

(e) The term “file,” when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by an investigative consumer reporting agency regardless of how the information is stored.

(f) The term “employment purposes,” when used in connection with an investigative consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

(g) The term “medical information” means information on a person’s medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

SEC. 8. Section 1786.10 of the Civil Code is amended to read:

1786.10. (a) Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding the consumer at the time of the request.

(b) All items of information shall be available for inspection, except that the sources of information, other than public records and records from data bases available for sale, acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed. However, if an action is brought under this title, those sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

1 Nothing in this title shall be interpreted to mean that
2 investigative consumer reporting agencies are required to divulge
3 to consumers the sources of investigative consumer reports except
4 in appropriate discovery procedures as outlined herein.

5 (c) The investigative consumer reporting agency shall also
6 identify the recipients of any investigative consumer report on the
7 consumer that the investigative consumer reporting agency has
8 furnished:

9 (1) For employment or insurance purposes within the
10 three-year period preceding the request.

11 (2) For any other purpose within the three-year period
12 preceding the request.

13 (d) The identification of a recipient under subdivision (c) shall
14 include the name of the recipient or, if applicable, the trade name
15 (written in full) under which the recipient conducts business and,
16 upon request of the consumer, the address and telephone number
17 of the recipient.

18 (e) The investigative consumer reporting agency shall also
19 disclose the dates, original payees, and amounts of any checks or
20 charges upon which is based any adverse characterization of the
21 consumer, included in the file at the time of the disclosure.

22 SEC. 9. Section 1786.11 of the Civil Code is amended to read:

23 1786.11. Every investigative consumer reporting agency that
24 provides an investigative consumer report to a person other than
25 the consumer shall make a copy of that report available, upon
26 request and proper identification, to the consumer for at least three
27 years after the date that the report is provided to the other person.

28 SEC. 10. Section 1786.16 of the Civil Code is amended to
29 read:

30 1786.16. (a) Any person described in subdivision (d) of
31 Section 1786.12 shall not procure or cause to be prepared an
32 investigative consumer report unless the following applicable
33 conditions are met:

34 (1) If an investigative consumer report is sought in connection
35 with the underwriting of insurance, it shall be clearly and
36 accurately disclosed in writing at the time the application form,
37 medical form, binder, or similar document is signed by the
38 consumer that an investigative consumer report regarding the
39 consumer's character, general reputation, personal characteristics,
40 and mode of living may be made. If no signed application form,

1 medical form, binder, or similar document is involved in the
2 underwriting transaction, the disclosure shall be made to the
3 consumer in writing and mailed or otherwise delivered to the
4 consumer not later than three days after the report was first
5 requested. The disclosure shall include the name and address of
6 any investigative consumer reporting agency conducting an
7 investigation, plus the nature and scope of the investigation
8 requested, and a summary of the provisions of Section 1786.22.

9 (2) If, at any time, an investigative consumer report is sought
10 for employment purposes other than promotion or reassignment,
11 the person procuring or causing the report to be made shall, not
12 later than three days after the date on which the report was first
13 requested, notify the consumer in writing that an investigative
14 consumer report regarding the consumer's character, general
15 reputation, personal characteristics, and mode of living will be
16 made. This notification shall include the name and address of the
17 investigative consumer reporting agency conducting the
18 investigation, the nature and scope of the investigation requested,
19 and a summary of the provisions of Section 1786.22.

20 (3) If an investigative consumer report is sought in connection
21 with the hiring of a dwelling unit, as defined in subdivision (c) of
22 Section 1940, the person procuring or causing the request to be
23 made shall, not later than three days after the date on which the
24 report was first requested, notify the consumer in writing that an
25 investigative consumer report will be made regarding the
26 consumer's character, general reputation, personal characteristics,
27 and mode of living. The notification shall also include the name
28 and address of the investigative consumer reporting agency that
29 will prepare the report and a summary of the provisions of Section
30 1786.22.

31 (4) The person procuring or causing the request to be made
32 shall certify to the investigative consumer reporting agency that
33 the person has made the applicable disclosures to the consumer
34 required by this subdivision and that the person will comply with
35 subdivision (b).

36 (5) The person procuring the report or causing it to be prepared
37 agrees to provide a copy of the report to the subject of the
38 investigation, as provided in subdivision (b).

39 (b) Any person described in subdivision (d) of Section 1786.12
40 who requests an investigative consumer report regarding that

1 consumer shall provide the consumer with a copy of the report and
2 information on who issued the report and how to contact them,
3 either at the time of the meeting or interview between the
4 consumer and the person who requests an investigative consumer
5 report regarding that consumer or within seven days of the date
6 such person receives the report, whichever is earlier.

7 (c) The provisions of subdivision (a) shall not apply to an
8 investigative consumer report procured or caused to be prepared
9 by an employer if the purpose of the employer is to determine
10 whether to retain an employee when there is a good faith belief that
11 the employee is engaged in any criminal activity likely to result in
12 a loss to the employer.

13 (d) Those persons described in subdivision (d) of Section
14 1786.12 of this title shall constitute the sole and exclusive class of
15 persons who may cause an investigative consumer report to be
16 prepared.

17 SEC. 11. Section 1786.18 of the Civil Code is amended to
18 read:

19 1786.18. (a) Except as authorized under subdivision (b), no
20 investigative consumer reporting agency shall make or furnish any
21 investigative consumer report containing any of the following
22 items of information:

23 (1) Bankruptcies that, from the date of adjudication, antedate
24 the report by more than 10 years.

25 (2) Suits that, from the date of filing, and satisfied judgments
26 that, from the date of entry, antedate the report by more than seven
27 years.

28 (3) Unsatisfied judgments that, from the date of entry, antedate
29 the report by more than seven years.

30 (4) Unlawful detainer actions where the defendant was the
31 prevailing party or where the action is resolved by settlement
32 agreement.

33 (5) Paid tax liens that, from the date of payment, antedate the
34 report by more than seven years.

35 (6) Accounts placed for collection or charged to profit and loss
36 that antedate the report by more than seven years.

37 (7) Records of arrest, indictment, information, misdemeanor
38 complaint, or conviction of a crime that, from the date of
39 disposition, release, or parole, antedate the report by more than
40 seven years. These items of information shall no longer be

1 reported if at any time it is learned that, in the case of a conviction,
2 a full pardon has been granted or, in the case of an arrest,
3 indictment, information, or misdemeanor complaint, a conviction
4 did not result; except that records of arrest, indictment,
5 information, or misdemeanor complaints may be reported pending
6 pronouncement of judgment on the particular subject matter of
7 those records.

8 (8) Any other adverse information that antedates the report by
9 more than seven years.

10 (b) The provisions of subdivision (a) are not applicable in the
11 case of any investigative consumer report to be used in the
12 underwriting of life insurance involving, or that may reasonably
13 be expected to involve, an amount of two hundred fifty thousand
14 dollars (\$250,000) or more.

15 (c) Except as otherwise provided in Section 1786.28, an
16 investigative consumer reporting agency shall not furnish an
17 investigative consumer report that includes information that is a
18 matter of public record and that relates to an arrest, indictment,
19 conviction, civil judicial action, tax lien, or outstanding judgment,
20 unless the agency has verified the accuracy of the information
21 during the 30-day period ending on the date on which the report
22 is furnished.

23 (d) An investigative consumer reporting agency shall not
24 prepare or furnish an investigative consumer report on a consumer
25 that contains information that is adverse to the interest of the
26 consumer and that is obtained through a personal interview with
27 a neighbor, friend, or associate of the consumer or with another
28 person with whom the consumer is acquainted or who has
29 knowledge of the item of information, unless either (1) the
30 investigative consumer reporting agency has followed reasonable
31 procedures to obtain confirmation of the information, from an
32 additional source that has independent and direct knowledge of the
33 information, or (2) the person interviewed is the best possible
34 source of the information.

35 SEC. 12. Section 1786.20 of the Civil Code is amended to
36 read:

37 1786.20. (a) Every investigative consumer reporting agency
38 shall maintain reasonable procedures designed to avoid violations
39 of Section 1786.18 and to limit furnishing of investigative
40 consumer reports for the purposes listed under Section 1786.12.

1 These procedures shall require that prospective users of the
2 information identify themselves, certify the purposes for which
3 the information is sought and that the information will be used for
4 no other purposes, and make the certifications described in
5 paragraph (4) of subdivision (a) of Section 1786.16. From the
6 effective date of this title, the investigative consumer reporting
7 agency shall keep a record of the purposes for which information
8 is sought, as stated by the user. Every investigative consumer
9 reporting agency shall make a reasonable effort to verify the
10 identity of a new prospective user and the uses certified by the
11 prospective user prior to furnishing the user any investigative
12 consumer reports. No investigative consumer reporting agency
13 may furnish any investigative consumer reports to any person
14 unless it has a written agreement that the investigative consumer
15 reports will be used by that person only for purposes listed in
16 Section 1786.12.

17 (b) Whenever an investigative consumer reporting agency
18 prepares an investigative consumer report, it shall follow
19 reasonable procedures to assure maximum possible accuracy of
20 the information concerning the individual about whom the report
21 relates. An investigative consumer reporting agency shall retain
22 the investigative consumer report for a period of three years.

23 (c) An investigative consumer reporting agency shall not make
24 an inquiry for the purpose of preparing an investigative consumer
25 report on a consumer for employment purposes if the making of
26 the inquiry by an employer or prospective employer of the
27 consumer would violate any applicable federal or state equal
28 employment opportunity law or regulation.

29 (d) Any investigative consumer reporting agency that violates
30 this section shall be liable to the consumer affected in an amount
31 not less than twenty-five thousand dollars (\$25,000).

32 SEC. 13. Section 1786.24 of the Civil Code is amended to
33 read:

34 1786.24. (a) If the completeness or accuracy of any item of
35 information contained in his or her file is disputed by a consumer,
36 and the dispute is conveyed directly to the investigative consumer
37 reporting agency by the consumer, the investigative consumer
38 reporting agency shall, without charge, reinvestigate and record
39 the current status of the disputed information or delete the item
40 from the file in accordance with subdivision (c), before the end of



1 the 30-day period beginning on the date on which the agency
2 receives the notice of the dispute from the consumer.

3 (b) The agency shall notify any person who provided
4 information in dispute at the address and in the manner specified
5 by that person. The notice shall include all relevant information
6 regarding the dispute that the investigative consumer reporting
7 agency has received from the consumer. The agency shall also
8 promptly provide to the person who provided the information in
9 dispute all relevant information regarding the dispute that is
10 received by the agency from the consumer during the
11 reinvestigation.

12 (c) In conducting a reinvestigation, the investigative consumer
13 reporting agency shall review and consider all relevant
14 information submitted by the consumer with respect to the
15 disputed item of information.

16 (d) Notwithstanding subdivision (a), an investigative
17 consumer reporting agency may terminate a reinvestigation of
18 information disputed by a consumer if the investigative consumer
19 reporting agency reasonably determines that the dispute is
20 frivolous or irrelevant, including by reason of a failure by a
21 consumer to provide sufficient information to investigate the
22 disputed information. Upon making a determination that a dispute
23 is frivolous or irrelevant, the investigative consumer reporting
24 agency shall notify the consumer, by mail or, if authorized by the
25 consumer for that purpose, by any other means available to the
26 agency. In this notification, the investigative consumer reporting
27 agency shall state the specific reasons why it has determined that
28 the consumer's dispute is frivolous or irrelevant and provide a
29 description of any information required to investigate the disputed
30 information, that may consist of a standardized form describing
31 the general nature of the required information.

32 (e) If a reinvestigation is made and, after reinvestigation, the
33 disputed item of information is found to be inaccurate, incomplete,
34 or cannot be verified by the evidence submitted, the investigative
35 consumer reporting agency shall promptly delete that information
36 from the consumer's file or modify the information, as
37 appropriate, based on the results of the reinvestigation, and shall
38 notify the consumer that the information has been deleted or
39 modified. The consumer reporting agency shall also notify any and
40 all sources from which the disputed information was obtained and

1 inform them in writing of the reasons and results of the
2 reinvestigation, and send a copy of this notification to the
3 consumer.

4 (f) No information may be reinserted in a consumer's file after
5 having been deleted pursuant to this section unless the person who
6 furnished the information verifies that the information is complete
7 and accurate. If any information deleted from a consumer's file is
8 reinserted in the file, the investigative consumer reporting agency
9 shall promptly notify the consumer of the reinsertion in writing or,
10 if authorized by the consumer for that purpose, by any other means
11 available to the agency. As part of, or in addition to, this notice, the
12 investigative consumer reporting agency shall provide to the
13 consumer in writing (1) a statement that the disputed information
14 has been reinserted, (2) the name, address, and telephone number
15 of any furnisher of information contacted or that contacted the
16 investigative consumer reporting agency in connection with the
17 reinsertion, and the telephone number of the furnisher, if
18 reasonably available, and (3) a notice that the consumer has the
19 right to a reinvestigation of the information reinserted by the
20 investigative consumer reporting agency and to add a statement to
21 his or her file disputing the accuracy or completeness of the
22 information.

23 (g) An investigative consumer reporting agency shall provide
24 notice to the consumer of the results of any reinvestigation under
25 this section by mail or, if authorized by the consumer for that
26 purpose, by other means available to the agency. The notice shall
27 include (1) a statement that the reinvestigation is completed, (2) an
28 investigative consumer report that is based on the consumer's file
29 as that file is revised as a result of the reinvestigation, (3) a
30 description or indication of any changes made in the investigative
31 consumer report as a result of those revisions to the consumer's
32 file, (4) a notice that, if requested by the consumer, a description
33 of the procedure used to determine the accuracy and completeness
34 of the information shall be provided to the consumer by the
35 investigative consumer reporting agency, including the name,
36 business address, and telephone number of any furnisher of
37 information contacted in connection with that information, (5) a
38 notice that the consumer has the right to add a statement to the
39 consumer's file disputing the accuracy or completeness of the
40 information, and (6) a notice that the consumer has the right to



1 request that the investigative consumer reporting agency furnish
2 notifications under subdivision (k).

3 (h) The presence of information in the consumer's file that
4 contradicts the contention of the consumer shall not, in and of
5 itself, constitute reasonable grounds for believing the dispute is
6 frivolous or irrelevant.

7 (i) If the investigative consumer reporting agency determines
8 that the dispute is frivolous or irrelevant, or if the reinvestigation
9 does not resolve the dispute, or if the information is reinserted into
10 the consumer's file pursuant to subdivision (f), the consumer may
11 file a brief statement setting forth the nature of the dispute. The
12 investigative consumer reporting agency may limit these
13 statements to not more than 500 words if it provides the consumer
14 with assistance in writing a clear summary of the dispute.

15 (j) Whenever a statement of dispute is filed, the investigative
16 consumer reporting agency shall, in any subsequent investigative
17 consumer report containing the information in question, clearly
18 note that the information is disputed by the consumer and shall
19 include in the report either the consumer's statement or a clear and
20 accurate summary thereof.

21 (k) Following the deletion of information from a consumer's
22 file pursuant to this section, or following the filing of a dispute
23 pursuant to subdivision (i), the investigative consumer reporting
24 agency shall, at the request of the consumer, furnish notification
25 that the item of information has been deleted or that the item of
26 information is disputed. In the case of disputed information, the
27 notification shall include the statement or summary of the dispute
28 filed pursuant to subdivision (i). This notification shall be
29 furnished to any person who has, within two years prior to the
30 deletion or the filing of the dispute, received an investigative
31 consumer report concerning the consumer for employment
32 purposes, or who has, within one year of the deletion or the filing
33 of the dispute, received an investigative consumer report
34 concerning the consumer for any other purpose, if these
35 investigative consumer reports contained the deleted or disputed
36 information, unless the consumer specifically requests in writing,
37 that this notification not be given to all persons or to any specified
38 persons. The investigative consumer reporting agency shall
39 clearly and conspicuously disclose to the consumer his or her
40 rights to make a request that this notification not be made.

1 (l) An investigative consumer reporting agency shall maintain
2 reasonable procedures designed to prevent the reappearance in a
3 consumer's file and in investigative consumer reports information
4 that has been deleted pursuant to this section and not reinserted
5 pursuant to subdivision (f).

6 (m) If the consumer's dispute is resolved by deletion of the
7 disputed information within three business days, beginning with
8 the day the investigative consumer reporting agency receives
9 notice of the dispute in accordance with subdivision (a), the
10 investigative consumer reporting agency shall be exempt from
11 requirements for further action under subdivisions (g), (i), and (j),
12 if the agency: (1) provides prompt notice of the deletion to the
13 consumer by telephone, (2) provides written confirmation of the
14 deletion and a copy of an investigative consumer report of the
15 consumer that is based on the consumer's file after the deletion,
16 and (3) includes, in the telephone notice or in a written notice that
17 accompanies the confirmation and report, a statement of the
18 consumer's right to request under subdivision (k) that the agency
19 not furnish notifications under that subdivision.

20 (n) Any investigative consumer reporting agency that compiles
21 and maintains files on consumers on a nationwide basis, as defined
22 in the federal Fair Credit Reporting Act, as amended (15 U.S.C.
23 Sec. 1681 et seq.), shall implement an automated system through
24 which furnishers of information to that agency may report the
25 results of a reinvestigation that finds incomplete or inaccurate
26 information in a consumer's file to other investigative consumer
27 reporting agencies.

28 (o) All actions to be taken by an investigative consumer
29 reporting agency under this section are governed by the applicable
30 time periods specified in Section 611 of the federal Fair Credit
31 Reporting Act, as amended (15 U.S.C. Sec. 1681i).

32 SEC. 14. Section 1786.26 of the Civil Code is amended to
33 read:

34 1786.26. (a) An investigative consumer reporting agency
35 shall make all disclosures pursuant to Sections 1786.10 and
36 1786.22 and furnish all investigative consumer reports pursuant to
37 Section 1786.24, without charge, if requested by the consumer.

38 (b) Except as otherwise provided in subdivision (d), an
39 investigative consumer reporting agency may charge a consumer
40 a fee not exceeding eight dollars (\$8) for making disclosures to the

1 consumer pursuant to Sections 1786.10, 1786.11, and 1786.22.
2 Any charges shall be indicated to the consumer prior to disclosure.

3 (c) An investigative consumer reporting agency shall not
4 impose any charge for providing notice to a consumer required
5 under Section 1786.24 or notifying a person pursuant to
6 subdivision (k) of Section 1786.24 of the deletion of information
7 that is found to be inaccurate or that cannot be verified.

8 (d) Upon the request of the consumer, an investigative
9 consumer reporting agency shall make all disclosures pursuant to
10 Section 1786.10 and 1786.22 once during any 12-month period
11 without charge to that consumer if the consumer certifies in
12 writing that he or she (1) is unemployed and intends to apply for
13 employment in the 60-day period beginning on the date the
14 certification is made, (2) is a recipient of public welfare assistance,
15 or (3) has reason to believe that the file on the consumer at the
16 investigative consumer reporting agency contains inaccurate
17 information due to fraud.

18 (e) An investigative consumer reporting agency shall not
19 impose any charge on a consumer for providing any notification
20 or making any disclosure required by this title, except as
21 authorized by this section.

22 SEC. 15. Section 1786.28 of the Civil Code is amended to
23 read:

24 1786.28. (a) Each investigative consumer reporting agency
25 that collects, assembles, evaluates, compiles, reports, transmits,
26 transfers, or communicates items of information concerning
27 consumers which are matters of public record shall specify in any
28 report containing public record information the source from which
29 this information was obtained, including the particular court, if
30 applicable, and the date that this information was initially reported
31 or publicized.

32 (b) A consumer reporting agency which furnishes a consumer
33 report for employment purposes and which for that purpose
34 compiles, collects, assembles, evaluates, reports, transmits,
35 transfers, or communicates items of information on consumers
36 which are matters of public record and are likely to have an adverse
37 effect upon a consumer's ability to obtain employment shall in
38 addition maintain strict procedures designed to insure that
39 whenever public record information which is likely to have an
40 adverse effect on a consumer's ability to obtain employment is

1 reported it is complete and up to date. For purposes of this
2 paragraph, items of public record relating to arrests, indictments,
3 convictions, suits, tax liens, and outstanding judgments shall be
4 considered up to date if the current public record status of the item
5 at the time of the report is reported.

6 SEC. 16. Section 1786.29 is added to the Civil Code, to read:

7 1786.29. An investigative consumer-reporting agency shall
8 provide the following notices:

9 (a) As a cover sheet to any report, a notice in at least 16 point
10 type that sets forth the following disclosures or warnings:

11 (1) The report does not guarantee the accuracy or truthfulness
12 of the information as to the subject of the investigation, but only
13 that it is accurately copied from public records. Evidence of
14 identity theft may or may not be identified from this report.

15 (2) The recipient of this report shall give a copy of this report
16 to the subject of the report.

17 (3) Failure to provide a copy of the report as required by law
18 may expose you to liability as specified in Section 1786.50.

19 (b) An investigative consumer reporting agency shall provide
20 a consumer seeking to obtain a copy of a report or making a request
21 to review a file, a written notice in simple plain English and
22 Spanish setting forth the terms and conditions of his or her right
23 to receive all disclosures as provided in Section 1786.26.

24 SEC. 17. Article 3 (commencing with Section 1786.40) of
25 Title 1.6A of Part 4 of Division 3 of the Civil Code is repealed.

26 SEC. 18. Section 1786.50 of the Civil Code is amended to
27 read:

28 1786.50. (a) In addition to the penalty specified in Section
29 1786.20, any investigative consumer reporting agency or user of
30 information that fails to comply with any requirement under this
31 title with respect to an investigative consumer report is liable to the
32 consumer who is the subject of the report in an amount equal to the
33 sum of all the following:

34 (1) Any actual damages sustained by the consumer as a result
35 of the failure or, except in the case of class actions, ten thousand
36 dollars (\$10,000), whichever sum is greater.

37 (2) In the case of any successful action to enforce any liability
38 under this chapter, the costs of the action together with reasonable
39 attorney's fees as determined by the court.

1 (b) If the court determines that the violation was grossly
2 negligent or willful, the court may, in addition, assess, and the
3 consumer may recover, punitive damages.

4 (c) Notwithstanding subdivision (a), an investigative
5 consumer reporting agency or user of information that fails to
6 comply with any requirement under this title with respect to an
7 investigative consumer report shall not be liable to a consumer
8 who is the subject of the report where the failure to comply results
9 in a more favorable investigative consumer report than if there had
10 not been a failure to comply.

11 SEC. 19. Section 1786.52 of the Civil Code is amended to
12 read:

13 1786.52. Nothing in this chapter shall in any way affect the
14 right of any consumer to maintain an action against an
15 investigative consumer reporting agency, a user of an investigative
16 consumer report, or an informant for invasion of privacy or
17 defamation.

18 An action to enforce any liability created under this title may be
19 brought in any appropriate court of competent jurisdiction within
20 two years from the date of discovery.

21 (a) Any investigative consumer reporting agency or user of
22 information against whom an action brought pursuant to Section
23 1681n or 1681o of Title 15 of the United States Code is pending
24 shall not be subject to suit for the same act or omission under
25 Section 1786.50.

26 (b) The entry of a final judgment against the investigative
27 consumer reporting agency or user of information in an action
28 brought pursuant to the provisions of Section 1681n or 1681o of
29 Title 15 of the United States Code shall be a bar to the maintenance
30 of any action based on the same act or omission which might be
31 brought under this title.

32 SEC. 20. Section 1786.53 is added to the Civil Code, to read:

33 1786.53. Any person who collects, assembles, evaluates,
34 compiles, reports, transmits, transfers, or communicates
35 information on a consumer's character, general reputation,
36 personal characteristics, or mode of living for the purposes
37 specified in subdivision (a) of Section 1786, in lieu of using the
38 services of an investigative consumer reporting agency, shall
39 provide that information to the consumer at the time of the meeting
40 or interview with the consumer, or within seven days of the date

1 the person obtains the information regarding the consumer,
2 whichever is earlier.

3 ~~SEC. 21. Section 1788.4 is added to the Civil Code, to read:~~

4 ~~1788.4. (a) No creditor may sell a consumer debt to a debt~~
5 ~~collector if the consumer's file with a consumer credit reporting~~
6 ~~agency is blocked with respect to that debt pursuant to subdivision~~
7 ~~(k) of Section 1785.16, or the creditor has reason to believe that~~
8 ~~the consumer is not obligated to pay the debt because he or she is~~
9 ~~a victim of identity theft, as defined in subdivision (d) of Section~~
10 ~~1798.80.~~

11 ~~(b) Subdivision (a) does not apply to a creditor's sale of a debt~~
12 ~~to a subsidiary or affiliate of the creditor.~~

13 ~~SEC. 22.~~

14 ~~SEC. 21. Title 1.81A 1.81.3 (commencing with Section~~
15 ~~1798.90) 1798.92) is added to Part 4 of Division 3 of the Civil~~
16 ~~Code, to read:~~

17
18 TITLE ~~1.81A~~. 1.81.3. IDENTITY THEFT

19
20 ~~1798.90.~~

21 1798.92. For the purposes of this title:

22 (a) "Claimant" means a person who has or purports to have a
23 claim for money or an interest in property in connection with a
24 transaction procured through identity theft.

25 (b) "Identity theft" means the unauthorized use of another
26 person's personal identifying information to obtain credit, goods,
27 services, money, or property.

28 (c) "Personal identifying information" means a person's
29 name, address, telephone number, driver's license number, social
30 security number, place of employment, employee identification
31 number, mother's maiden name, demand deposit account number,
32 savings account number, or credit card number.

33 (d) "Victim of identity theft" means a person who had his or
34 her personal identifying information used without authorization
35 by another to obtain credit, goods, services, money, or property,
36 and did not use or possess the credit, goods, services, money, or
37 property obtained by the identity theft, and filed a police report in
38 this regard pursuant to Section 530.5 of the Penal Code.

39 ~~1798.91.~~

1 1798.93. (a) A person may bring an action against a claimant
2 to establish that the person is a victim of identity theft in
3 connection with the claimant's claim against that person. If the
4 claimant has brought an action to recover on its claim against the
5 person, the person may file a cross-complaint to establish that the
6 person is a victim of identity theft in connection with the
7 claimant's claim.

8 (b) A person shall establish that he or she is a victim of identity
9 theft by a preponderance of the evidence.

10 (c) A person who proves that he or she is a victim of identity
11 theft, as defined in Section 530.5 of the Penal Code, as to a
12 particular claim, shall be entitled to a judgment providing all of the
13 following, as appropriate:

14 (1) A declaration that he or she is not obligated to the claimant
15 on that claim.

16 (2) A declaration that any security interest or other interest the
17 claimant had purportedly obtained in the victim's property in
18 connection with that claim is void and unenforceable.

19 (3) An injunction restraining the claimant from collecting or
20 attempting to collect from the victim on that claim, from enforcing
21 or attempting to enforce any security interest or other interest in
22 the victim's property in connection with that claim, or from
23 enforcing or executing on any judgment against the victim on that
24 claim.

25 (4) If the victim has filed a cross-complaint against the
26 claimant, the dismissal of any cause of action in the complaint filed
27 by the claimant based on a claim which arose as a result of the
28 identity theft.

29 (5) Actual damages, attorney's fees, and costs, and any
30 equitable relief that the court deems appropriate. In order to
31 recover actual damages or attorney's fees in an action or
32 cross-complaint filed by a person alleging that he or she is a victim
33 of identity theft, the person shall show that he or she provided
34 written notice to the claimant that a situation of identity theft might
35 exist, including, upon written request of the claimant, a valid copy
36 of the police report or the Department of Motor Vehicles
37 investigative report promptly filed pursuant to Section 530.5 of the
38 Penal Code at least 30 days prior to his or her filing of the action,
39 or within his or her cross-complaint pursuant to this section.

(6) A civil penalty, in addition to any other damages, of up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence all of the following:

(A) That at least 30 days prior to filing an action or within the cross-complaint pursuant to this section, he or she provided written notice to the claimant at the address designated by the claimant for complaints related to credit reporting issues that a situation of identity theft might exist and explaining the basis for that belief.

(B) That the claimant failed to diligently investigate the victim's notification of a possible identity theft.

(C) That the claimant continued to pursue its claim against the victim after the claimant was presented with facts that were later held to entitle the victim to a judgment pursuant to this section.

~~1798.92.~~

~~1798.94.~~ Notwithstanding Section 379 of the Code of Civil Procedure, a person bringing an action or filing a cross-complaint under this title may join other claimants in the same action or the same cross-complaint regardless of whether each claimant's claim arises out of the same transaction or occurrence.

~~1798.93.~~

~~1798.95.~~ A court shall have continuing jurisdiction over an action or cross-complaint filed pursuant to this title in order to provide for the joinder of related causes of action based on the theft of the same person's identity and the joinder of further defendants based upon the theft of the same person's identity, regardless of whether a final judgment has been entered as to any defendant. The court's continuing jurisdiction shall terminate 10 years after filing of the original action unless the court, prior to that date, finds good cause to extend jurisdiction over the matter.

~~1798.94.~~

~~1798.96.~~ Any action brought pursuant to this title or any joinder of a defendant pursuant to Section 1798.82 may be brought within four years of the date the person who alleges that he or she is a victim of identity theft knew or, in the exercise of reasonable diligence, should have known of the existence of facts which would give rise to the bringing of the action or joinder of the defendant.

~~1798.95.~~

1 1798.97. (a) This title does not apply to a transaction subject
2 to Section 1747.10.

3 (b) Nothing in this title shall be construed to affect a claimant's
4 rights and remedies against a person who perpetrates identity theft
5 or against any person who used or possessed the credit, goods,
6 services, or property obtained by identity theft.

7 (c) This title is cumulative to the rights and remedies provided
8 under other laws.

9 *SEC. 22. Section 1.5 of this bill incorporates amendments to*
10 *Section 1785.10 of the Civil Code proposed by both this bill and*
11 *AB 488. It shall only become operative if (1) both bills are enacted*
12 *and become effective on or before January 1, 2002, (2) each bill*
13 *amends Section 1785.10 of the Civil Code, and (3) this bill is*
14 *enacted after AB 488, in which case Section 1 of this bill shall not*
15 *become operative.*

